

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

CONSEJO DE SALUD DE
PUERTO RICO, INC., *et al.*,

Plaintiffs,

V.

UNITED STATES OF AMERICA, *et al.*,

Defendants.

Case No. 18-cv-1045 (GAG)

DEFENDANTS' MOTION FOR LEAVE TO FILE REPLY BRIEF
AND FOR EXTENSION OF TIME

Defendants United States of America and Alex M. Azar II, in his official capacity as Secretary of Health & Human Services, by and through the undersigned counsel, respectfully move the Court for leave to file a reply brief that shall not exceed seventeen (17) pages, by no later than July 27, 2018. The reasons for this request are set forth below.

1. On April 6, 2018, Defendants filed their motion to dismiss the Complaint filed by Plaintiffs Consejo de Salud de Puerto Rico, Eduardo Martínez-Tull, and Víctor Montalvo-Martell (collectively, “Consejo plaintiffs”) under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). *See* Mot. to Dismiss, ECF No. 20.

2. Because at the time of the filing of the motion to dismiss, “co-plaintiff” Commonwealth of Puerto Rico (which the Court ordered to be joined on April 4, 2018) had not indicated whether it intended to file a separate complaint or join the complaint filed by the Consejo plaintiffs, Defendants “reserve[d] their right to respond either to a notice from the Commonwealth indicating whether it seeks to join all (or parts) of the Complaint, or to respond

to a separate pleading, if the Commonwealth seeks to submit one.” Mem. in Supp. of Mot. to Dismiss, ECF No. 20-1, at 6 n.2.

3. On April 17, 2018, the Commonwealth sought a 30-day extension of time “to file a Response in Opposition to Defendants’ Motion to Dismiss,” ECF No. 22, which the Court granted and also applied to the Consejo plaintiffs, ECF No. 23. On May 21, 2018, the Commonwealth and the Consejo plaintiffs jointly filed a second motion seeking a 45-day extension of time to file their response to Defendants’ motion to dismiss, ECF No. 24, which the Court granted, ECF No. 25.

4. On July 5, 2018, the Consejo plaintiffs filed their opposition to Defendants’ motion, ECF No. 28. On July 6, 2018, the Commonwealth filed a motion to join the opposition brief filed by the Consejo plaintiffs, ECF No. 29.

5. Under Local Rule 7(c), Defendants may, with prior leave of Court and within seven days of the service of any objection to a motion, file a reply brief, which shall not exceed ten pages, in response to an opposing memorandum.

6. Defendants ask this Court for leave to file a reply brief in support of their motion to dismiss that shall not exceed seventeen (17) pages. This memorandum is necessary because Defendants have not yet had the opportunity to address the Commonwealth’s position in this matter. Moreover, Defendants need to discuss further key threshold jurisdictional issues, as well as properly respond to the arguments raised in the opposition memorandum filed by the Consejo plaintiffs.

7. Moreover, even though Local Rule 7(c) provides only for seven days to file a reply memorandum, a brief extension of time, until July 27, 2018, is necessary to accommodate undersigned counsel’s litigation schedule—*i.e.*, scheduled work trip to San Francisco (July 24-

26), as well as various litigation deadlines in other matters (July 11, 16, 19-20, 27)—and to allow sufficient time for the memorandum to undergo appropriate review within the U.S. Department of Justice and the Department of Health & Human Services.

8. Defendants have only requested previously a short four-day extension of time, which the Court granted. *See* Order, ECF No. 15. Defendants certify that this request is made in good faith and respectfully submit that the Consejo plaintiffs and the Commonwealth, who had three months to file their responses, will not be prejudiced by this short extension of time. Moreover, granting this motion will have no effect on any other existing deadlines.

9. This Court should grant this motion for the additional reason that it would benefit from having this reply memorandum prior to the oral argument set for “early August.” *See* Order, ECF No. 32. For purposes of oral argument, undersigned counsel respectfully notifies the Court that he will be unavailable after August 13, 2018, due to scheduled work travel from August 13-15 and scheduled vacation from August 15-September 2. Accordingly, Defendants would respectfully ask the Court to set oral argument for some date prior to August 13, 2018.¹

For the foregoing reasons, Defendants respectfully request that the Court grant Defendants leave to file a reply memorandum that shall not exceed seventeen (17) pages by no later than July 27, 2018.

Dated: July 10, 2018

Respectfully submitted,

CHAD A. READLER
Acting Assistant Attorney General

JENNIFER D. RICKETTS
Branch Director

¹ To the extent possible, Defendants would prefer that the argument for this case be set during the week of August 6-10.

/s/ César A. López-Morales

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CERTIFICATE OF SERVICE

I hereby certify, pursuant to Local Civil Rule 5.1(b), that on July 10, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to counsel for all parties in this action.

/s/ Cesar A. Lopez-Morales
CESAR A. LOPEZ-MORALES (DPR# G02704)
U.S. Department of Justice